

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

RECEIVED  
MAIL ROOM

MAY 16 2007

U.S. DISTRICT COURT  
E. DIST. OF ARKANSAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

Pine Bluff

DIVISION

CASE NO.

5:07cv111

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAY 16 2007

JAMES W. McCORMACK, CLERK  
By: *[Signature]*

Parties

In item A below, place your full name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.

A. Name of plaintiff: Rickie Mays  
ADC # 112604

Address: P.O. Box 400, Grady, Ar., 71644

Name of plaintiff: \_\_\_\_\_  
ADC # \_\_\_\_\_

Address: \_\_\_\_\_

Name of plaintiff: \_\_\_\_\_  
ADC # \_\_\_\_\_

This case assigned to District Judge *[Signature]*  
and to Magistrate Judge *[Signature]*

Address: \_\_\_\_\_

In item B below, place the full name of the defendant in the first blank, his official position in the second blank, his place of employment in the third blank, and his address in the fourth blank.

B. Name of defendant: Larry Johnson

Position: Lieutenant

Place of employment: Varner Super Max

Address: P.O. Box 400, Grady, Ar., 71644

Name of defendant: Marshall Gorder

Position: Sergeant

Place of employment: Varner Super MAX

Address: P.O. Box 400, Grady, Ar., 71644

Name of defendant: \_\_\_\_\_

Position: \_\_\_\_\_

Place of employment: \_\_\_\_\_

Address: \_\_\_\_\_

Name of defendant: \_\_\_\_\_

Position: \_\_\_\_\_

Place of employment: \_\_\_\_\_

Address: \_\_\_\_\_

II. Are you suing the defendants in:

- ☐ official capacity only  
☐ personal capacity only  
☒ both official and personal capacity

III. Previous lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes \_\_\_ No \_\_\_

B. If your answer to A is yes, describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

☐ Parties to the previous lawsuit:

Plaintiffs: \_\_\_\_\_

Defendants: \_\_\_\_\_

- ☐ Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_
- ☐ Docket Number: \_\_\_\_\_
- ☐ Name of judge to whom case was assigned: \_\_\_\_\_
- ☐ Disposition: (for example: Was the case dismissed? Was it appealed? Is it still pending?) \_\_\_\_\_
- ☐ Approximate date of filing lawsuit: \_\_\_\_\_
- ☐ Approximate date of disposition: \_\_\_\_\_

IV. Place of present confinement: Varner Super Max

V. At the time of the alleged incident(s), were you:  
(check appropriate blank)

- \_\_\_\_\_ in jail and still awaiting trial on pending criminal charges
- \_\_\_\_\_ serving a sentence as a result of a judgment of conviction
- \_\_\_\_\_ in jail for other reasons (e.g., alleged probation violation, etc.)  
explain: Parole violation

VI. The Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, requires complete exhaustion of administrative remedies of all claims asserted, prior to the filing of a lawsuit. There is a prisoner grievance procedure in the Arkansas Department of Correction, and in several county jails. Failure to complete the exhaustion process provided as to each of the claims asserted in this complaint may result in the dismissal without prejudice of all the claims raised in this complaint.

A. Did you file a grievance or grievances presenting the facts set forth in this complaint?

Yes X No \_\_\_\_\_

B. Did you completely exhaust the grievance(s) by appealing to all levels within the grievance procedure?

Yes X No \_\_\_\_\_

If not, why? \_\_\_\_\_

## VII. Statement of claim

State here (as briefly as possible) the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

Preliminary statement: This is a civil right action file by inmate Rickie Mays a prisoner who is incarcerated seeking relief under 42 U.S.C. 1983 Alleging excessive use of force and in violation of the 8<sup>th</sup> amendment to the United States constitution.

① The court has jurisdiction over the plaintiff claims of violation.

② Defendant Larry Johnson: who is the Lt. of DD shift at the Varner Super Max that is being sued in his individual capacity.

③ Defendant Marshall Bender: who is the Isolations Sergeant 5 days a week at the Varner Super Max that is being sued in his individual capacity.

④ On the 12-17-05 Lt. Johnson sprayed me for no reason with the Port-T-Unit (MK46) which was excessive use of force maliciously and sadistically to do major harm while I was in a small one man

cell soaking from head to toe with a chemical Agent which shouldn't never been sprayed inside my cell on me because the Part-T-unit is made for riots.

6) Lt. Johnson or Sgt. Gonder didn't call for no trained personnel to tape the incident with the Audio-Visual Equipment which the chemical Agent I was spray with required.

7) Sgt. Gonder failed to protect me from Lt. Johnson vicious Attack which is ADE policy which he was present when Lt. Johnson viciously sprayed me for no reason.

8) Lt. Johnson and Sgt. Gonder escorted me to the shower then Lt. Johnson sprayed me with a can of saber red mace while I was locked in the shower; then Sgt. Gonder sprayed me with a can of Top cop mace braking policies and the purpose to harm me.

9) So Sgt. Gonder left and came back with the 37mm riot gun and act as he was going to shoot and I look to pay attention to Sgt. Gonder, Lt. Johnson maliciously and sed- stically sprayed me in my face point blank range which is against ADE policy.

10) The way I was sprayed so many times I feel Sgt. Gonder and Lt. Johnson was trying to murder me which is a crime.

11) From Sgt. Gonder and Lt. Johnson excessive use of force of mace, my eyes have been giving me problems and my medical jacket will show complaints on sick calls about my eyes.

12) Wherefore plaintiff asked that all relief be granted as requested in plaintiff relief, because plaintiff 8th amendment was violated and plaintiff has suffer mental anguish.

Respectfully Submitted  
Richie Mays

VIII. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

① Plaintiff would like to be rewarded compensatory damages in the amount of \$66,666 for the pain and suffering and mental anguish. ② Plaintiff would like each defendant to reward him \$66,666 for the physical and emotional injuries sustained as a result of plaintiff several times maced.

I declare under penalty of perjury (18 U.S.C. § 1621) that the foregoing is true and correct.

Executed on this 15 day of May, 2007.

Rickie Mays

Signature(s) of plaintiff(s)

**GRIEVANCE FORM - (Attachment 1A)**

FOR OFFICE USE ONLY

UNIT/CENTER V.S.M.Grv. # UV-05-00642  
Date Received 12-21-05  
Grievance Code: 801

PLEASE PRINT

Name Rickie Mays ADC# 112604 Brk# 15019 Job Assignment Cell 14IS THIS GRIEVANCE A MEDICAL GRIEVANCE? Yes    No   \*\*\*\*\*  
All complaints/concerns should first be handled informally before proceeding to the formal grievance procedure.THE ORIGINAL INFORMAL RESOLUTION FORM SHALL BE ATTACHED**Informal Action Taken**Have you discussed this problem with your designated problem-solver? Yes    No    If yes, give date     
Why do you feel the informal resolution was unsuccessful? Larry Norris Memo 7-30-04 states:  
Physical Abuse use grievance\*\*\*\*\*  
Please give a **BRIEF**, clear statement of your grievance. This statement must be specific as to the complaint, **dates**, places, personnel involved, how **you** were affected and what you want to resolve the issue. **One issue** or incident per grievance. Additional pages or forms will **not** be allowed and if attached, will result in the automatic rejection of this grievance without content review.

sprayed  
On the 12-17-05 Lt. Johnson came to my cell and me with the Part-T Unit with ~~me~~ using the video cam recorder, then turned around I was sprayed by Sgt. Gonda with Saber red mace which he shouldn't done, because I'm Lt. And above, then Lt. Johnson told Sgt. Gonda to get the shotgun which neither one of them had no business with and if you will rewind you will see Sgt. Gonda with the shotgun loading it up in front of the shower in Iso. 4 At 4:00pm to 4:30pm, so I was paying a attention to Sgt. Gonda with the shotgun so Lt. Johnson sprayed me in my face. I was sprayed 3 times and threaten with shotgun all because Lt. Johnson wouldn't give me what I supposed have on behavior control. This was cruel and Unusual Punishment Under 8th Amendment Right and Attempt to Murder.

IS THIS AN EMERGENCY SITUATION? YES X NO    If yes, why?   

(An emergency situation is one in which you may be subject to a substantial risk or physical harm. It should not be declared for ordinary problems that are not of a serious nature.) If you marked yes, you may give this completed form to any officer or department employee who shall sign the attached emergency receipt, give you the receipt and deliver it without undue delay to the Warden/Center Supervisor or, in their absence, to the Unit/Center Assistant Warden. REPRISALS: If you are harmed or threatened because of your use of the grievance form, report it immediately to the Warden.

Rickie Mays  
INMATE SIGNATURE

JAN 18 2006

DATE 12-21-05

(TO BE FILLED OUT BY THE RECEIVING OFFICER) INMATE GRIEVANCE SUPERVISOR

RECEIPT FOR ADMINISTRATIVE SITUATIONS

OFFICER (Please Print) R. L. McCree Signature R. L. McCreeFROM WHICH INMATE? R. MAYS ADC# 112604DATE: 12/20/05 TIME: 2:07am

INMATE NAME: Mays, Ricky L. ADC #: 112604B GRIEVANCE #: VU-05-00642

## WARDEN'S/CENTER SUPERVISOR'S DECISION

In Response to your grievance: Lt. Johnson and Sgt. Gonder advise that on 12/07/5 you refused to give up your tray. After several orders, Lt. Johnson advised you that if you didn't follow orders you would be sprayed. You refused, and was sprayed and escorted to the shower. Once in the shower you refused orders to remove your jumpsuit and other clothing to ensure you did not have any contraband. After being sprayed by Sgt. Gonder, you did comply and was searched. After showering, you were escorted to your cell. Therefore, I find no merit in your grievance.

*[Signature]*  
 Signature of ARO or  
 Warden's/Supervisor's Designee

*[Signature]*  
 Title

1-12-06  
 Date

## INMATE'S APPEAL

If you are not satisfied with this response, you may appeal this decision within five days by filling in the information requested below and mailing it to the appropriate Deputy/Assistant Director. Keep in mind that you are appealing the decision to the original complaint. Do not list additional issues which are not part of your complaint.

WHY DO YOU NOT AGREE WITH THE RESPONSE? It was nothing said about the shotgun or reason of Sgt. Gonda spraying me while Lt. Johnson was there and I'm Lt. and above and about Lt. Johnson spraying me in my face and I did comply with all the rules they just sprayed me because they do they can get away with it.

*Rickey Mays*  
 Inmate Signature

112604  
 ADC#

1-17-06  
 Date

RECEIVED

JAN 18 2008  
 INMATE GRIEVANCE SUPERVISOR  
 ADMINISTRATION BUILDING

INMATE NAME Ricky L. Mays ADC# 112604 GRIEVANCE # VU-05-00642

## DEPUTY/ASSISTANT DIRECTOR'S DECISION

I have reviewed your grievance (Att.1A) dated 12-21-06 in which you state, "On the 12-17-05 Lt. Johnson came to my cell and sprayed me with the Part-T-Unit with out using the video cam recorder, then turned around I was sprayed by Sgt. Gonda with Saber red mace which he should'nt done because I'm Lt. and above, then Lt. Johnson told Sgt. Gonda to get the shotgun which neither one of them had no business with and if your will rewind you will see Sgt. Gonda with the shotgun loading it up in front of the shower in Iso. 4 at 4:00 pm to 4:30 pm, so I was paying a attention to Sgt. Gonda with the shotgun so Lt. Johnson sprayed me in my face. I was sprayed 3 times and threaten with shotgun all because Lt. Johnson would'nt give me what I supposed have on behavior control. This was cruel and unusual punishment under 8<sup>th</sup> amendment right and attemp to murda." I have also reviewed the Warden's Response, your appeal to this office, Staff statements, 005 Reports, Medical Reports, Major Disciplinary Report, Unit Policy (VU 27.5.0, Use of Force and Application of Restraints) and other related documents.

After review of your complaint and the above listed documents I find the incident in question meets the criteria for "Calculated Use of Force". Per policy calculated use of force would be appropriate, for example, if the inmate is in a cell or in an area where the door or grill is, or can be, secured, even where an inmate is verbalizing threats or brandishing a weapon, provided staff believe there is no immediate danger of the inmate hurting self or others. The calculated use of force situation permits the use of other staff (i.e., supervisors, mental health professionals, counselors, etc.) in attempting to resolve situations in a non-confrontational manner.

Although it is documented that you failed to follow several direct orders given by staff and it appears staff used what they felt was the necessary action (at that time); I am at this time bringing this matter to the attention of Warden Harris and Assistant Warden Luckett to ensure that chemical agent (s) are used appropriately. Your allegations that staff was attempting to murder you are unfound, but if after further review by unit level staff corrective action is warranted I am sure the necessary procedures will be followed.

  
SIGNATURE

 3-2-06  
DATE

Please be advised that if you appeal this decision to the U.S. District Court, a copy of this Deputy/Assistant Director's Decision must be attached to any petition or complaint or the Court must dismiss your case without notice. You shall also be subject to paying filing fees pursuant to the Prison Litigation Act of 1995.

1107 1051